DYTM TENGKU IDRIS SHAH IBNI SULTAN SALAHUDDIN ABDUL AZIZ SHAH

v.

DIKIM HOLDINGS SDN BHD & ANOR

FEDERAL COURT, KUALA LUMPUR
AHMAD FAIRUZ PCA
HAIDAR MOHD NOOR CJ (MALAYA)
DENIS ONG JCA
[ORIGINAL JURISDICTION NO: 1/2002]
30 JANUARY 2003

CONSTITUTIONAL LAW: *Suit involving ruler - Jurisdiction - Suit filed in High Court before plaintiff became ruler - Whether High Court continued to have jurisdiction to adjudicate suit after plaintiff became ruler - Whether Special Court had the exclusive jurisdiction - Whether High Court had power to transfer suit to Special Court - Whether suit should be withdrawn and re-filed in Special Court - Federal Constitution, arts. 38(4), 70(1), 121, 181, 182, 183*

The plaintiff, a member of the royal family of Selangor, commenced a suit against the defendants in the High Court for the unpaid balance of the purchase price of certain shares purchased by the defendants. The defendants counterclaimed. Subsequently, the plaintiff was appointed the Regent of Selangor upon the appointment of his father to the throne as the 11th Yang di-Pertuan Agong. The High Court then referred the issue to the Federal Court as to whether the plaintiff's claim and the defendants' counterclaim should be adjudicated in the Special Court to the exclusion of the High Court of Malaya. The court decided that the plaintiff as the Regent of Selangor was not a ruler within arts. 181, 182 and 183 of the Federal Constitution ('the Constitution') and as such, the plaintiff's suit was still triable in the High Court (see *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd & Anor* [2002] 2 CLJ 57). The plaintiff now became the Ruler of Selangor upon the demise of his father. In view thereof, the suit was referred to the Federal Court for a second time herein on the following issues: (1) whether the plaintiff was now a ruler within arts. 181, 182 and 183 of the Constitution; (2) whether the High Court continued to have jurisdiction to adjudicate the suit; (3) whether the suit could be transferred by the High Court to the Special Court; and (4) whether the suit had to be withdrawn and re-filed in the Special Court.

Held:
Per Denis Ong JCA

[1] The right of succession as the Ruler of the State of Selangor was guaranteed to the plaintiff by art. 71(1) of the Constitution. Therefore, the plaintiff was a "Ruler" like his father in the full sense of that word by virtue of art. 181(1) of the same. What differentiated him now as a Ruler from his previous status as a Regent was the most important attribute of sovereignty that His Highness now possessed and which was previously lacking in him as a Regent. With the attribute of sovereignty, the plaintiff would have been immune to all proceedings brought against him in his personal capacity prior to the amendment to art. 181(2) of the Constitution. However, after the amendment to the article by Act A848, such sovereign immunity had been demolished so that the plaintiff, although a Ruler now, was liable to be sued in his personal capacity. Such proceedings whether by or against the plaintiff in his personal capacity must be brought in the Special Court. (pp 813 d-f, 814 h & 815 a-e)

[2] It was an agreed fact that on and after 22 November 2001, the plaintiff was officially the Ruler of the State of Selangor within arts. 181, 182 and 183 of the Constitution. However, the suit was brought in the High Court before 22 November 2001 and was pending trial there. Based on the principles of the law on accession, the Latin maxim *'rex nunquam moritur'* stated in Halsbury and art. 181(1) of the Constitution, it was irrelevant to the construction or meaning of "Ruler" when the cause of action arose. "Ruler" in arts. 181, 182 and 183 was a Ruler for all time including his successor in office. Therefore, upon the plaintiff's accession as a Ruler, the High Court ceased to have jurisdiction over the plaintiff and could no longer continue to exercise jurisdiction to adjudicate on the suit. Article 181(2) of the Constitution operated to bar the suit in the High Court. Also, upon accession, the plaintiff came within the exclusive jurisdiction of the Special Court. (pp 816 d-h & 817 a)

[3] The constitutional position of the plaintiff upon accession as Ruler was safeguarded by art. 70(1) of the Constitution, and by art. 38(4) of the same no law directly affecting his position and dignity shall be passed without the consent of the Conference of Rulers. Therefore, the suit pending in the High Court must be withdrawn. However, art. 183 of the Constitution provides a solution to the problem without having to compromise the dignity and position of the plaintiff as Ruler or the rights of the defendants to counterclaim against the plaintiff. It followed that the action would have

to be commenced afresh by the plaintiff in the Special Court and the consent of the Attorney General sought for and obtained to counterclaim against the plaintiff. (p 817 c-f)

[4] The Special Court is an establishment that is entirely separate and removed from the ordinary courts. The Special Court is created for the ruling class over which it has exclusive jurisdiction whereas the ordinary courts are for ordinary litigants. Further, the ordinary courts never had jurisdiction over the Rulers. (p 817 h)

[5] Article 121 of the Constitution expressly provides that "the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law". Such powers of transfer are contained in the Courts of Judicature Act 1964 and the Subordinate Courts Act 1948 and do not extend to the Special Court. The jurisdiction of the Special Court is both original and final, the decision of which cannot be challenged in any court on any ground. Therefore, the High Court has no power to transfer the suit to the Special Court. (p 818 a-b)

[Plaintiff's suit in High Court withdrawn; suit within jurisdiction of Special Court.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Plaintif, seorang kerabat DiRaja Kesultanan Selangor, memulakan suatu prosiding terhadap defenden di Mahkamah Tinggi untuk mendapatkan baki harga pembelian beberapa syer yang dibeli oleh defenden. Pihak defenden telah membuat tuntutan-balas. Sejurus kemudian, plaintif telah dilantik sebagai Pemangku Raja Selangor selepas perlantikan ayahandanya ke takhta sebagai Yang Dipertuan Agong yang ke-11. Mahkamah Tinggi kemudiannya telah merujuk kes ini ke Mahkamah Persekutuan atas isu sama ada tuntutan plaintif dan tuntutan-balas defenden sepatutnya diputuskan di Mahkamah Khas dan bukan di Mahkamah Tinggi Malaya. Mahkamah Persekutuan berpendapat bahawa oleh kerana plaintif sebagai Pemangku Raja Selangor tidak merupakan seorang Raja di bawah perkara-perkara 181, 182 dan 183 Perlembagaan Persekutuan ('PP') maka guaman plaintif masih boleh dibicarakan di Mahkamah Tinggi (sila rujuk *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd & Anor* [2002] 2 CLJ 57). Plaintif kini telah dijadikan Sultan Kerajaan Selangor selepas kemangkatan ayahandanya. Dalam hal sedemikian, guaman telah dirujuk ke Mahkamah Persekutuan untuk kali kedua atas isu-isu berikut: (1) sama ada plaintif sekarang merupakan seorang Raja bagi maksud perkara-perkara 181, 182 dan 183 PP; (2) sama ada Mahkamah Tinggi masih mempunyai bidangkuasa untuk membicarakan guaman;

(3) sama ada guaman boleh dipindah oleh Mahkamah Tinggi ke Mahkamah Khas; dan (4) sama ada guaman harus ditarikbalik dan difailkan semula di Mahkamah Khas.

Diputuskan:
Oleh Denis Ong HMR

[1] Hak pewarisan sebagai Raja Kerajaan Selangor terjamin kepada plaintif di bawah per. 71(1) PP. Maka, plaintif merupakan seorang "Raja" seperti ayahandanya dalam ertikata penuh perkataan tersebut di bawah per. 181(1) PP. Apa yang membezakan plaintif pada masa kini sebagai Raja daripada statusnya sebelum ini sebagai Pemangku Raja adalah sifat kedaulatan yang paling penting dipunyainya, yang mana ianya tidak wujud semasa plaintif menjadi Pemangku Raja. Dengan sifat kedaulatan tersebut, plaintif imun kepada semua prosiding yang dimulakan terhadapnya dalam kapasiti peribadinya sebelum pindaan kepada per. 181(2) PP. Walau bagaimanapun, selepas pindaan kepada perkara tersebut melalui Akta A848, kekebalan kedaulatan sedemikian dimansuhkan di mana plaintif, walaupun seorang Raja boleh disaman dalam kapasiti peribadinya. Prosiding sedemikian, sama ada dimulakan olehnya, atau dibawa terhadapnya dalam kapasiti peribadinya mesti dibawa ke Mahkamah Khas.

[2] Tidak dipertikaikan bahawa pada dan selepas 22 November 2001, plaintif dengan rasminya telah menjadi Raja Kerajaan Selangor di bawah perkara-perkara 181, 182 dan 183 PP. Walau bagaimanapun, guaman tersebut telah di bawa ke Mahkamah Tinggi sebelum 22 November 2001 dan masih belum selesai. Berasaskan prinsip undang-undang naik takhta, pepatah Latin *'rex nunquam moritur'* seperti yang terkandung dalam *Halsbury* dan perkara 181(1) PP, ianya tidak relevan kepada pentafsiran atau ertikata "Raja" bila kausa tindakan berkenaan dimulakan. "Raja" dalam perkara-perkara 181, 182 dan 183 adalah seorang Raja untuk selamanya termasuk penggantinya. Oleh yang demikian, selepas plaintif menaiki takhta sebagai Raja, Mahkamah Tinggi tidak lagi mempunyai bidangkuasa ke atasnya dan tidak boleh meneruskan bidangkuasanya untuk membicarakan guaman tersebut. Perkara 181(2) PP berfungsi untuk menghalang guaman tersebut di Mahkamah Tinggi. Lagipun, selepas menaiki takhta, plaintif berada dalam bidangkuasa eksklusif Mahkamah Khas.

[3] Kedudukan perlembagaan plaintif selepas menaiki takhta sebagai Raja dilindungi oleh per. 70(1) PP, dan melalui per. 38(4) undang-undang yang secara langsung mempunyai kesan terhadap kedudukan dan martabatnya tidak boleh diluluskan tanpa kebenaran Persidangan Raja-Raja. Oleh yang demikian, prosiding yang masih belum selesai di Mahkamah Tinggi harus

ditarikbalik. Walau bagaimanapun, per. 183 PP memberi suatu penyelesaian terhadap masalah tersebut tanpa mengkompromasikan martabat dan darjat plaintif sebagai Raja atau hak pihak defendan untuk membuat tuntutan-balas terhadap plaintif. Dengan itu, tindakan tersebut perlulah dimulakan semula oleh plaintif di Mahkamah Khas dan kebenaran Peguam Negara harus diperolehi untuk membuat tuntutan-balas terhadapnya.

[4] Mahkamah Khas merupakan suatu institusi yang pada keseluruhannya terasing dan terkeluar daripada mahkamah biasa. Mahkamah Khas ditubuhkan untuk golongan DiRaja dan mempunyai bidangkuasa eksklusif berbanding dengan mahkamah biasa yang diadakan untuk litigan biasa. Tambahan pula, mahkamah biasa tidak pernah mempunyai bidangkuasa ke atas Raja-Raja.

[5] Perkara 121 PP dengan nyatanya menetapkan bahawa Mahkamah-mahkamah Tinggi dan mahkamah bawahan akan mempunyai bidangkuasa dan kuasa sebagaimana ditetapkan di bawah undang-undang persekutuan. Kuasa memindah kes terkandung dalam Akta Mahkamah Kehakiman 1964 dan Akta Mahkamah Rendah 1948, dan ianya tidak terpakai kepada Mahkamah Khas. Mahkamah Khas mempunyai bidangkuasa asal dan muktamad, di mana keputusannya tidak boleh dicabar dalam mana-mana mahkamah atas apa-apa sebab. Oleh yang demikian, Mahkamah Tinggi tidak ada kuasa untuk memindah guaman berkenaan ke Mahkamah Khas.

Guaman plaintif di Mahkamah Tinggi ditarikbalik; guaman berada dalam bidangkuasa Mahkamah Khas.]

Case(s) referred to:

DYTM Tengku Idris Shah ibni Sultan Salahudin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd [2002] 2 CLJ 57; [2002] 3 CLJ 69 FC ***(refd)***

Faridah Begum bte Abdullah v. Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'Ayatuddin Al Mu'Adzam Shah (sued in his personal capacity) [1996] 2 CLJ 159 ***(refd)***

Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 FC ***(refd)***

Karpal Singh v. Sultan of Selangor [1987] 2 CLJ 342; [1987] CLJ (Rep) 686 ***(refd)***

Sukma Darmawan Sasmitaat Madja v. Ketua Pengarah Penjara Malaysia & Anor [1999] 1 CLJ 481 CA ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 84
Federal Constitution, arts. 38(4), 70(1), 71(1), 121(1), 181(1), 182(2), (3), 183

For the plaintiff - Lim Kian Leong (Low Chi Cheng); M/s Lim Kian Leong & Co
For the defendants - Bastian Vendargon (Philip Chai Lip Keong & Dhayana Shila); M/s Soo Thien Ming & Nashrah
Watching brief - Abdul Aziz Abdul Rahim & Syed Marzidy Syed Marzuki DPP

[Appeal from High Court, Kuala Lumpur; Suit No: D1-22-1350-1998]

Reported by Usha Thiagarajah

JUDGMENT

Denis Ong JCA:
In the sequel of the plaintiff's accession as the 9th Sultan of Selangor upon the demise of his father, His Royal Highness Sultan Salahuddin Abdul Aziz Shah Alhaj on 21 November 2001 who was the former Sultan and Ruler of the State of Selangor, this case comes before the Federal Court for the second time in the same manner of a special case referred by the same High Court in Kuala Lumpur and pursuant to s. 84 of the Courts of Judicature Act 1964 (Act 91) for our decision on seven questions namely:

(1) As the plaintiff is now the Sultan of Selangor from 22 November 2001 and therefore the Ruler of the State of Selangor, does the High Court of Malaya continue to have jurisdiction to adjudicate on the plaintiff's claim, which was filed before the plaintiff became the Ruler of the State of Selangor, in the light of arts. 182(2) and 182(3) of the Federal Constitution?

(2) If the answer to Question 1 is in the negative, does the High Court of Malaya or any other Court constituted under Part IX of the Federal Constitution have jurisdiction and/or power to transfer the plaintiffs' action to the Special Court, which is constituted under art. 182, Part XV of the Federal Constitution?

(3) If the answer to Question 2 is in the negative, does the plaintiff's claim have to be withdrawn and re-filed in the Special Court?

(4) As the defendants commenced their counterclaim against the plaintiff in the High Court of Malaya at Kuala Lumpur prior to the plaintiff becoming the Sultan of Selangor from 22 November 2001, does the High Court of Malaya continue to have jurisdiction to adjudicate the defendants' counterclaim in the light of art. 181(2), art. 182(2), and art. 182(3) of the Federal Constitution?

(5) If the answer to Question 4 is in the affirmative, are the defendants nevertheless required to obtain consent from the Attorney General in the light of art. 183 of the Federal Constitution?

(6) If the answer to Question 4 is in the negative, does the High Court of Malaya or any other court constituted under Part IX of the Federal Constitution have jurisdiction and/or power to transfer the defendants' counterclaim to the Special Court, which is constituted under art. 182, Part XV of the Federal Constitution?

(7) If the answer to Question 6 is in the negative, does the defendants' counterclaim have to be withdrawn and re-filed in the Special Court?

For ease and convenience I will in this judgment refer to the parties by their original citation of plaintiff and defendants who are the appellant and respondents herein.

Submissions from learned counsel on both sides and from the learned senior federal counsel who held a watching brief for the Federal Attorney General actually commenced on 17 October 2002 after two previous adjournments on 31 July 2002 and 23 September 2002 respectively, granted at the request of both sides on the ground that they were close to resolving their differences shortly. A third request for adjournment by counsel for the defendants for another reason was refused. The case was not resolved and hence the hearing. At its conclusion on the same day, we unanimously answered questions 1, 2, 4 and 6 in the negative, and questions 3 and 7 in the affirmative but declined to answer question 5 on the ground that it did not arise in the light of our answer to question 4. I now give my reasons.

The facts agreed between the parties are as follows:

1. On 6 May 1998 the plaintiff filed a writ of summons and statement of claim against both defendants. On 3 July 1998 the defendants filed a defence and counterclaim which was subsequently amended pursuant to a court order dated 7 January 1999. On 17 July 1998 the plaintiff filed his reply and defence to the counterclaim.

2. On 24 April 1999 the plaintiff was appointed the Regent of Selangor to exercise the functions as "Sultan" when his father Al-Marhum DYMM Sultan Salahuddin Abdul Aziz Shah ibni Al-Marhum Sultan Hisamuddin Alam Shah was appointed the 11th Yang di-Pertuan Agong.

3. On 30 July 2001 the High Court in Kuala Lumpur, by consent of the parties, ordered four questions to be referred to the Federal Court by way of a special case under s. 84 of Act 91.

4. Of the four questions the Federal Court answered only question 1 but not questions 2, 3 and 4. Question 1 was worded as follows:

> (1) Whether the plaintiff, the Regent of the State of Selangor, who is appointed to exercise the functions as 'Sultan' is a 'Ruler' for the purposes of Articles 181, 182 and 183 of the Federal Constitution (as amended by Act A848) having regard to the aforesaid provisions and the interpretation of 'Ruler' as defined in Article 160 of the Federal Constitution?

The Federal Court answered it in the negative.

5. On 21 November 2001, Sultan Salahudin Abdul Aziz Shah Al Haj passed away.

6. On 22 November 2001 the plaintiff was proclaimed the Sultan of Selangor and he is the present Ruler of Selangor.

7. On 6 May 2002 by consent of the parties the High Court in Kuala Lumpur once more ordered the reference of the seven questions listed in the opening paragraph of this judgment to the Federal Court.

For fuller background facts and a clearer picture of the dispute between the parties, it is necessary to elaborate on certain agreed facts from materials available in the appeal record:

(a) on agreed fact no. 1, it is a fact that the original action and the counterclaim therein referred to is identified as the Kuala Lumpur High Court Suit No: D1-22-1350-1998 (the suit) from which the first and second references to the Federal Court were ordered by the High Court on 30 July 2001 (Federal Court Special Case No: 02-2001) and on 6 May 2002 (Federal Court Special case No: 01-2002) respectively. Further, the cause of action in the writ and statement of claim was in contract based on an agreement in writing dated 10 July 1995 (the SPA) entered into between the plaintiff as vendor and the first and second defendants as purchasers for the sale and purchase of certain shares for the purchase price of RM100 million. The claim of the plaintiff was for RM35 million being the unpaid balance of the purchase price and also for interest and cost. The amended counterclaim of the defendants was for RM25 million based on a supplemental agreement dated 15 January 1996 (the SA). Neither the SPA nor the SA was included as part of the record of appeal. There is no dispute that the claim of the plaintiff and the counterclaim of the defendants against the plaintiff are in the plaintiff's personal capacity.

(b) on agreed fact nos. 2, 5 and 6, HRH Sultan Salahuddin Abdul Aziz Shah Al Haj was until 21 November 2001 concurrently holding the status of the 8th Sultan of Selangor and the 11th Yang di-Pertuan Agong of Malaysia.

(c) On agreed fact nos. 3 and 4, the judgment of the Federal Court is reported sub nomine *DYTM Tengku Idris Shah ibni Sultan Salahudin Abdul Aziz Shah v. Dikim Holdings Sdn. Bhd. & Anor* [2002] 2 CLJ 57 and [2002] 3 CLJ 69 (FC).

4. The issues posed by questions 1, 4, 2 and 6 are (a) whether having regard to the change of status of the plaintiff and to arts. 181(2), 182(2) and (3), the High Court continues to exercise jurisdiction to adjudicate on the suit which was commenced before such change of status (issue (a)); and, (b) whether the High Court has the jurisdiction/power to transfer the suit to the Special Court (issue (b)).

5. Dato' Vendargon of learned counsel for the defendants draws attention to the words "by or against ... the Ruler" in arts. 181(2), 182(3) and 183 which to him are ambiguous in the absence of a meaning assigned to them in the Federal Constitution. As he sees it, these words are a matter for the Federal Court to construe. He submits that the purposive or the mischief rule of construction applies but not the literal rule which if applied, would require all actions involving a Ruler whether instituted before or after his appointment to be heard in the Special Court. It follows from this that pending proceedings in the High Court commenced before the change of status would have to be withdrawn and re-commenced in the Special Court after the change of status since there is no provision in the law for the transfer of proceeding from the High Court to the Special Court or for the Special Court to order the High Court to transfer such proceeding to itself. Time would have run against both parties from the commencement of proceeding in the High Court and its re-commencement in the Special Court. And he queries what is going to happen if the claim and counterclaim were statute-barred. Further, in the case of a litigant who is not a Ruler, under art. 183 the consent of the Attorney-General is a pre-requisite to the institution of proceedings in the Special Court and he opines that such litigant would lose his right to counterclaim against the Ruler. He says these are the absurdities if the literal construction is applied which prompted the seven questions asked in this Special Case now before this court for the second time. In the premises he submits that these words should be so construed as to exclude proceedings pending in the High Court brought by persons who subsequently become Rulers and that such a result can be achieved by applying the purposive or the mischief rule of construction to the word "Ruler".

In this regard, he makes two points:

(i) Article 182(3) expressly mentions where the cause of action arose but is silent on when it arose. Thus there is no link in time as to when the cause of action accrued. The point he makes here is that the legislature has not expressly stated whether "Ruler" there should be looked at, at the time when the cause of action arose or at the time when the matter comes before the court.

(ii) Article 183 uses the words "shall be instituted" as opposed to "brought" and he notes the absence of the words "continued with" which creates the problem for the defendants.

On point (i) he submits that the purposive rule of construction applies so that "Ruler" there means Ruler at the time when the cause of action arose which takes into account limitation period and the vested rights of the ordinary litigant. He further submits that the court should not read "when" into art. 182(3) with effect from 30 March 1993 the date of coming into force of Act A 848 or construe "Ruler" literally to mean Ruler at the time when the matter comes before the court. On point (ii), he submits that "instituted" in art. 183 means commenced or started.

As regards the power to order the transfer of proceedings from the civil courts to the Special Court, he submits that the civil courts have no such power and likewise the Special Court has no power to order the transfer from the civil courts to itself.

To a query from the court, he agrees that limitation is irrelevant to the present case.

At the conclusion of his submission he answers the questions asked thus:

Question 1 : Answer. Yes.

Question 2 : Answer. No, if the answer of the Court to Question 1 is in the negative.

Question 3 : Answer. No.

Question 4 : Answer. Yes.

Question 5 : Answer. The consent of the Attorney-General is not required.

Question 6 : Answer. No.

Question 7 : Answer. No.

In his outline submission, Mr. Lim Kian Leong of learned counsel for the plaintiff addresses on four matters namely:

(i) Sovereignty of the Ruler.
He refers to decided cases and states that sovereignty of the Ruler and sovereign immunity cannot be disputed and have been recognised even before Merdeka and that the ordinary courts had no jurisdiction over the Ruler unless the Ruler submits to jurisdiction. Article 181 affirms and preserves the Ruler's rights and privileges post Merdeka before its amendment in 1993. Even with the 1993 amendments, sovereignty of the Ruler is still preserved although sovereign immunity has been limited by the amendment to art. 181(2) and the insertion of arts. 182 and 183 which deal with proceedings by or against the Ruler.

(ii) Jurisdiction of the ordinary courts and the Special Court in proceedings by or against the Ruler.
He repeats that the ordinary courts did not enjoy any jurisdiction in such proceedings even before 1993 unless the Ruler submits to jurisdiction. The 1993 amendments do not confer jurisdiction on the High Court over the Ruler. He says that the Special Court has been specifically created to deal with proceedings by or against the Ruler and arts. 181, 182 and 183 expressly confer exclusive jurisdiction on the Special Court.

(iii) The suit comes within arts. 181, 182 and 183.
Various pre-emptive arguments are made by the appellant under this sub-head in anticipation of those to be advanced by the respondent. They are omitted here and will not be dealt with because they seem off the mark from arguments actually canvassed in court by the defendants. The only submissions of significance are those in paras 6.15 and 6.16 of his outline submission. He makes the point there that upon the plaintiff becoming the Ruler the attribute of sovereignty attaches to him and immunity from legal proceedings, as a result. Thus he argues that the question is not when the suit is filed and it matters not whether it is filed before or after the plaintiff becomes Ruler. The fact that the plaintiff is the Ruler, he concludes, brings the plaintiff within the provisions of arts. 181, 182 and 183 that is to say, within the jurisdiction of the Special Court and not the High Court. The suit must therefore be heard in the Special Court and prior consent of the Attorney General under art. 183 is required for the counterclaim in the suit.

(iv) Power to transfer the suit.

He concedes that the Special Court is a creature of its own, meaning that the Special Court is a separate establishment from the ordinary courts. He further concedes that there are no express provisions for the transfer of proceedings between the ordinary courts and the Special Court. Nonetheless he says that both the Federal Court and the High Court possess inherent powers to transfer the suit to the Special Court because firstly, the Special Court is not dissimilar from the ordinary courts in that it deals with both civil and criminal cases although exclusively with claims by or against the Ruler; and secondly, to all intents and purposes the Special Court is a court of law which applies the same principles of law and procedure.

In conclusion he submits that the questions asked should be answered thus:

Questions 1 and 4	:	Answer. No.
Questions 2 and 6	:	Answer. Yes (with further order or direction on transfer).
Question 3	:	Answer. If this Honourable Court is of the view that there is no power to transfer or that the ordinary courts should not order a transfer, then the answer should be Yes.
Question 5	:	Answer. This question need not be answered if the answer to Question 4 is No.
Question 7	:	Answer. If this Honourable Court is of the view that there is no power to transfer or that the ordinary courts should not order a transfer, then the answer to this question should be Yes.

Dato' Abdul Aziz, the learned senior federal counsel makes three points in his submission:

(a) the Attorney General's stand is that art. 182 gives exclusive jurisdiction to the Special Court and cites an excerpt from the judgment of Mohd Azmi FCJ in *Faridah Begum bte Abdullah v. Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'Ayatuddin Al Mu'Adzam Shah (sued in his personal capacity)* [1996] 2 CLJ 159 (Sp. C) in support of that stand.

(b) once the plaintiff is made a Ruler, he is protected regardless of when he was made Ruler. Otherwise, enforcement by the civil court would be impractical. In this regard he cites *Sukma Darmawan Sasmitaat Madja v.*

Ketua Pengarah Penjara Malaysia & Anor [1999] 1 CLJ 481 (CA) at p. 487c-e per Gopal Sri Ram JCA and adds that here he agrees with learned counsel for the plaintiff.

(c) the High Court has no power to transfer the suit to the Special Court and neither does the Special Court have power to order the transfer to itself.

The legal result of agreed fact nos. 5 and 6 taken together is a change – both status wise and functionally of the plaintiff from a Crown Prince and Regent to a Sultan and Ruler of the State of Selangor. That transition took place on 21 November 2001 upon the demise of his father. The fact of his accession as the 9th Sultan of Selangor was published to the public by a proclamation issued on 22 November 2001. From 21 November 2001 he is constitutionally the Ruler of the State of Selangor. He is a hereditary Malay Ruler determined in accordance with the Constitution of the State of Selangor 1959, a successor to his father who was the 8th Sultan of Selangor and the former Ruler of that State. The right of succession as the Ruler of the State of Selangor is guaranteed to the plaintiff by art. 71(1) of the Federal Constitution: *Dato' Menteri Othman bin Baginda & Anor v. Dato' Ombi Syed Alwi bin Syed Idrus* [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 (FC) per Raja Azlan Shah Ag. LP. He is thus a "Ruler", like his father, in the full sense of that word in art. 181(1) of the Federal Constitution following the construction and meaning of "Ruler" determined by the Federal Court in *Othman*. This means that he is a Malay, of Royal Blood, a descendant of Sultan Hisamuddin Alam Shah, a male who professes the Muslim religion and possesses the four attributes namely, sovereignty, prerogatives, powers and jurisdiction in art. 181(1). What differentiates him now as a Ruler from his previous status as a Regent is the most important attribute of sovereignty that he now possesses and which was previously lacking in him as a Regent. *Halsbury's Laws of England*, 4th edn, vol 8, see also David M Walker – *The Oxford Companion to Law* (1980) under entry "Accession of the Sovereign" and *Osborne's Concise Law Dictionary*, 8th edn, for meaning of "accession" states the position of the Sovereign (Ruler) thus:

> 897. The Sovereign never dies.
> ... the Sovereign is regarded legally as immortal, the maxim of law being that "the King never dies". The death of the Sovereign in her natural body is therefore termed legally her demise, meaning the transfer of the Kingdom to her successor.

> 851. Accession.
> On the death of the reigning sovereign the Crown vests immediately in the person who is entitled to succeed, it being a maxim of the common law that the King never dies. The new Sovereign is therefore entitled to exercise full prerogative rights without further ceremony.
>
> The fact of accession of the new sovereign is published to the nation by a proclamation which is issued as soon as conveniently may be after the death of the former Sovereign by ...
>
> 877. Attributes of the Sovereign.
> The special privileges and prerogatives allowed by the law to the Sovereign are attributed to her primarily in her regal capacity or body politic. But it appears that, in general, such privileges and prerogatives attach to the Sovereign also in her natural capacity, the greater drawing to itself the less, and imbuing it, as it were, with its qualities. ... In legal contemplation the Sovereign never dies, and the mention of the Sovereign in statutes includes successors. ...

These principles of law stated in *Halsbury's* are germane to the right of succession in art. 71(1) and subsumed there under; and they apply to the plaintiff as Ruler of the State of Selangor. See RH Hickling, Malaysian Public Law, p. 71 last para. Clause (1) of art. 71 so far as is relevant is couched in language as follows:

> 71(1) The Federation shall guarantee the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State; ...

The right of the plaintiff to succeed as the Ruler of the State of Selangor is expressly recognised in art. 6(1) and (2) of the Constitution of the State of Selangor and such right is doubly entrenched by arts. 71(1), 38(4) and 159(5) of the Federal Constitution. Thus, on the demise of his father, the State of Selangor is transferred to the plaintiff as his successor. The Crown vests immediately on the plaintiff who is entitled to succeed and the plaintiff as the new Ruler is therefore entitled to exercise full prerogative rights without further ceremony. And references to "Rulers" and "the Ruler of a State" in arts. 181(1), (2); 182(2), (3) and 183 include successors. See the definition of "Sultan" in art. 4(1) of The Constitution of the State of Selangor.

As a consequence of this attribute of sovereignty, he would have been immuned by virtue of art. 181(2) before its amendment by the Constitution (Amendment) Act 1993 (Act A 848) to all proceedings against him in his personal capacity if brought in the ordinary courts established under Part IX of the Federal Constitution. See *Othman* [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 (FC). See

also *Faridah Begum bte Abdullah v. Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'Ayatuddin Al Mu'Adzam Shah (sued in his personal capacity)* [1996] 2 CLJ 159 (Sp. C) per Mohd Azmi FCJ. In this context *Halsbury's Laws of England*, 4th edn, vol 8 states thus in paras. 896 and 966:

> 896. The Sovereign can do no wrong.
> The law clothes the Sovereign's person with absolute perfection; hence it is a maxim of the common law that "the King can do no wrong," and no remedy lies against the Sovereign in person in civil or criminal matters, for the prerogative is created for the benefit of the people and cannot be exerted to their prejudice.
>
> 966. Proceedings against the Sovereign in her private capacity.
> At common law no proceeding, civil or criminal, was maintainable against the Sovereign in person, for it was said that as the courts were her own they could have no jurisdiction over her. These rules continue to apply to the Sovereign in her private capacity.

However, such sovereign immunity referred to in para. 896 above has been demolished by Act A 848 so that the plaintiff, although a Ruler now, is liable to be sued in his personal capacity. See R.H. Hickling, *Malaysian Public Law*, p. 72 last para. As Ruler, the plaintiff may also sue in his personal capacity. Such proceedings whether by or against the plaintiff (a Ruler) in his personal capacity must be brought in the Special Court (Article 181(2) and art. 182; *Faridah Begum* [1996] 2 CLJ 159 per Eusoff Chin FJ) for the rule referred to in para. 966 continues to apply in Malaysia to the Ruler of a State in relation to proceedings brought in the ordinary courts established under Part IX of the Federal Constitution.

The Special Court is conferred exclusive jurisdiction to try all civil cases by or against the Ruler notwithstanding where the cause of action arose and further, that its majority decision is final and conclusive and shall not be challenged or called into question in any court on any ground (art. 182(3) and (6)).

By art. 182(4) the Special Court is conferred the same jurisdiction and powers vested in the inferior courts, the High Court and the Federal Court by the Federal Constitution or any Federal Law. By the same clause it is also provided that the Special Court has a registry of its own in Kuala Lumpur. Pursuant to cl. 7 of art. 182, Rules of the Special Court 1994 were made and published as PU(A) 525/94 which, *inter alia*, set up the registry of the Special Court located at the Registry of the Federal Court at Kuala Lumpur under a registrar and a seal of its own and provide for the procedure and practice of the Special Court.

It is clear to me that the first point to be established by the plaintiff under art. 182(3) is that he is a Ruler in the full sense of that word *DYTM Tengku Idris Shah v. Dikim Holdings Sdn Bhd* [2002] 3 CLJ 69 (FC) the determination of which settles the proper forum wherein proceedings are to be brought that is to say, in the Special Court or in the High Court as the case may be. If he is a Ruler then he comes within the exclusive jurisdiction of the Special Court; he does not come within the jurisdiction of the High Court, an ordinary court established under Part IX of the Federal Constitution which never had jurisdiction over Rulers before or after the amendments introduced by Act A848, and civil cases involving him must therefore be brought in and tried by the Special Court. If he is not a Ruler then he does not come within its exclusive jurisdiction; he comes within the jurisdiction of the High Court. The combined effect of arts. 181(2), 182(2) and 182(3) is that civil proceedings by or against a Ruler in his personal capacity must be brought in and tried by the Special Court.

It is an agreed fact that on and after 22 November 2001 the plaintiff is officially the Ruler of Selangor in the full sense of the word "Ruler" in arts. 181, 182 and 183. See *DYTM Tengku Idris Shah* [2002] 3 CLJ 69 (FC). It must necessarily follow from this fact that if the suit were brought on or after that date, there would have been no dispute by the defendants that it would have been properly brought in and triable by the Special Court.

The problem here is that the suit was brought in the High Court in Kuala Lumpur before 22 November 2001 and was pending trial there. Dato' Vendargon takes the stand that the suit should remain in the High Court to be tried there and that "Ruler" in arts. 181, 182 and 183 should be construed to mean Ruler at the time when the cause of action arose – not a Ruler when the proceeding is before the court because art. 182(3) is specific on where but is silent on when the cause of action arose. Both Mr. Lim and the senior federal counsel take the stand that the suit should be tried in the Special Court for the same reason namely, because the plaintiff is now the Ruler of the State of Selangor regardless of when he became Ruler.

Having regard to the principles of law on accession, the Latin maxim *"rex nunquam moritur"* stated in *Halsbury's*, and art. 181(1), I conclude that time, and therefore when the cause of action arose, is understood to be irrelevant to the construction or meaning of "Ruler". For that reason, it appears to me unnecessary to spell out "when" the cause of action arose in art. 182(3). In short, "Ruler" in arts. 181, 182 and 183 is a Ruler for all time which includes his successor in office. Upon his accession as a Ruler I hold on issue (a) above that the High Court ceased to have jurisdiction over the plaintiff and thus could

no longer continue to exercise jurisdiction to adjudicate on the suit. Article 181(2) operates to bar the suit in the High Court: *Karpal Singh v. Sultan of Selangor* [1987] 2 CLJ 342; [1987] CLJ (Rep) 686 (HC). And I hold further that upon accession, the plaintiff comes within the exclusive jurisdiction of the Special Court. He can sue or be sued in his personal capacity only in the Special Court established under Part XV of the Federal Constitution compatible with his newly acquired status (art. 182(2)). That is the position of the plaintiff *vis-a-vis* the defendants under the Federal Constitution. To construe in the way as Dato' Vendargon submits, is to import a limitation on the meaning of "Ruler" in art. 181(1) which would be inconsistent with the Latin maxim, would lead to discontinuity in the office of the Ruler and exclude his successor in office from invoking arts. 181(2) and 182(2) besides demeaning the plaintiff, a Ruler, by placing him on the same footing as an ordinary litigant in the High Court. The constitutional position of the plaintiff upon accession as Ruler is safeguarded by art. 70(1), and by art. 38(4) no law directly affecting his position and dignity shall be passed without the consent of the Conference of Rulers.

The fate of the suit pending in the High Court is thus obvious. It must be withdrawn.

The Federal Constitution, by art. 183, provides a solution to the problem without compromising the dignity and position of the plaintiff as Ruler or the rights of the defendants to counterclaim against the plaintiff in the Special Court subject only to the defendants having obtained the consent of the Attorney General for the counterclaim which corresponds to the *fiat justitiae* in England. Such consent is exercisable by him personally. It follows therefore that the action will have to be commenced afresh by the plaintiff in the Special Court and the consent of the Attorney General sought for and obtained to counterclaim against the plaintiff.

Whether the Special Court has the power to order the High Court to transfer the suit to itself, is in my view irrelevant because it is not raised specifically and neither can it be said to be covered by questions 2 and 4. Consequently, I refrain from answering or express any view on it.

On issue (b) above, from what has already been said above it is clear that the Special Court created under Part XV of the Federal Constitution is an establishment entirely separate and removed or severed from the ordinary courts created under Part IX. The Special Court is a court created for the ruling class over which it has exclusive jurisdiction whereas the ordinary courts which constitute the judiciary is for the ordinary litigants. Further, as earlier said, waiver aside, the ordinary courts never had jurisdiction over the Rulers.

By art. 121(1) it is expressly provided that "the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law." Such powers of transfer are contained in Act 91 and the Subordinate Courts Act 1948 (Act 92) and do not extend to the Special Court. The jurisdiction of the Special Court is both original and final, the decision of which cannot be challenged in any court, on any ground. See R.H. Hickling – *Malaysian Public Law*, p. 73. It seems out of place to mention the inherent powers of the High Court in the light of art. 121(1).

Thus, I hold on issue (b) that the High Court has no powers to transfer the suit to the Special Court.

For all these reasons stated, I answered the questions asked in this reference in the manner indicated earlier in this judgment. By consent each party bears its own costs and so it was ordered.

Both the learned President of the Court of Appeal and the Chief Judge of the High Court in Malaya have read this judgment in draft and expressed their agreement and the reasons therefor.